

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Solar Turbines Facility  
2200 Pacific Highway  
San Diego, California 92101  
EPA ID No. CAD 008314908

Respondent:

San Diego Unified Port District  
3165 Pacific Highway  
San Diego, California 92101

Docket No. HWCA: P3-07/08-007

ENFORCEMENT ORDER

Health and Safety Code  
Sections 25187 and 25202.5(a)(2)

INTRODUCTION

1.1. Parties. The California State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to San Diego Unified Port District (Respondent), located at 3165 Pacific Highway, San Diego, California 92101.

1.2. Facility. Respondent is the owner of the real property located at 2200 Pacific Highway, San Diego, California where Solar Turbines Incorporated (Solar) operates a hazardous waste facility (Facility) under a long-term lease from Respondent.

1.3. Permitting Status. In 1987, Solar obtained a Hazardous Waste Facility Permit under the federal Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) to operate seven hazardous waste management units at the Facility. In June 1994, Solar submitted closure certification reports for the closure of the seven hazardous waste management units to the Department for review. In June 1995, the Department determined that land use restrictions were required for the Facility before the Department would approve the final closure of these units.

Solar, in consultation with the Department, Respondent and the California Regional Water Quality Control Board, San Diego Region (San Diego RWQCB), prepared a Baseline Risk Assessment for the purpose of completing the final closure of the seven hazardous waste management units and investigating any release of hazardous waste at the Facility. The Baseline Risk Assessment consists of a Human Health Risk Assessment which documents the potential health risks to current and future onsite and offsite human receptors from conditions at the Facility, and an Ecological Risk Assessment which documents the potential risk to offsite aquatic receptors in the San Diego Bay adjacent to the Facility.

Based on this Baseline Risk Assessment, the Department has determined that for the purposes of completing the final closure of these units in a timely manner, certain land use restrictions must be imposed on the Facility in order to protect public health and the environment from any hazardous waste remaining at the Facility. The Department has also determined that the Facility, if and when it is subject to certain land use restrictions, would not pose any unacceptable risk to human health or safety or the environment.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto. Pursuant to California Code of Regulations, title 22, division 4.5, chapter 14 and/or chapter 15, article 7, both the owner and operator of a hazardous waste facility are responsible for the closure and post-closure requirements

at the facility. Health and Safety Code section 25202.5 (a) (2) authorizes the Department to require the owner of a hazardous waste facility to execute and record a written instrument that imposes restrictions on the present and future use of all or part of the land on which the hazardous waste facility is located. Pursuant to California Code of Regulations, title 22, section 67391.1, a Land Use Covenant signed by the property owner must be recorded when facility closure is undertaken and when there is hazardous waste remaining at the facility.

#### DETERMINATION OF VIOLATIONS

2. The Department has determined that:

Respondent violated California Code of Regulations, title 22, division 4.5, chapter 14 and/or chapter 15, article 7 and Health and Safety Code section 25202.5 (a) (2) in that Respondent failed to complete the necessary closure activities for the seven hazardous waste management units by failing to sign and record a Land Use Covenant to restrict land use of the Facility. Respondent refused to sign and record a Land Use Covenant after the Department had made every reasonable effort to address Respondent's various concerns and to negotiate a Land Use Covenant, or an alternative mechanism allowed under California Code of Regulations, title 22, section 67391.1, with Respondent, and despite the fact that Respondent had been regularly involved in the discussions with the Department, Solar and the San Diego RWQCB regarding the closure process, risk assessment, land use restrictions and investigation of any release of hazardous waste at the Facility.

#### SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, IT IS HEREBY



ORDERED THAT:

3.1. Within 30 days of the effective date of this Order, Respondent, as Covenantor, shall sign and record a Land Use Covenant, or an alternative mechanism allowed under California Code of Regulations, title 22, section 67391.1, that contains the following requirements and restrictions:

3.1.1. Prohibited Uses. The use of the Facility shall be restricted for commercial (including retail and hotel) and industrial purposes only. The Facility shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

3.1.2. Soil Management

- (a) Activities that will disturb the soil, such as excavation, grading, removal, trenching, filling, earth movement or mining, shall only be permitted on the Facility pursuant to a Soil Management Plan and a Health and Safety Plan as approved by the Department.
- (b) Any contaminated soil brought to the surface by grading, excavation, trenching, or backfilling shall be managed in accordance with all applicable provisions of state and federal laws.

3.1.3. Prohibited Activities. The following activities shall not be conducted at the Facility:

- (a) Raising of cattle, food crops or agricultural products.
- (b) Drilling for drinking water, oil, or gas.
- (c) Extraction of groundwater for purposes other than site remediation or construction dewatering.

3.1.4. Access for Department. Covenantor agrees that the Department shall have reasonable right of entry and access to the Facility for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect public health and safety or the environment.

3.1.5. Access for Implementing Operation and Maintenance Activities. Covenantor agrees that the entity or person responsible for implementing the operation and maintenance activities shall have reasonable right of entry and access to the Facility for the purpose of implementing such operation and maintenance activities until such time as the Department determines that no further operation and maintenance activities are required.

3.2. Submittals. All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

Branch Chief  
Southern California Permitting and Corrective Action Branch  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201

Mr. John Anderson  
California Regional Water Quality Control Board, San Diego Region

9174 Sky Park Court, Suite 100  
San Diego, California 92123

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

(a) Modify the document as deemed necessary and approve the document as modified, or

(b) Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to the requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance



with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access: Access to the Facility shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Facility at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Facility; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10. Government Liabilities: The State of California or the Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California or the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.12. Extension Request: If Respondent is unable to perform any activity or



submit any document within the time required under this Order, Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

### OTHER PROVISIONS

4.1. Additional Enforcement Actions and Penalties: By issuance of this Order, the Department does not waive the right to take further enforcement actions and impose penalties, or the right to impose penalties for the violations stated in this Order.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees.

4.4. Time Periods. "Days" for purpose of this Order means calendar days.

4.5. Compliance with Waste Discharge Requirements: Respondent shall comply with any and all applicable waste discharge requirements issued by the State Water Resources Control Board or the California Regional Water Quality Control Board, San Diego Region.

RIGHT TO A HEARING

5. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

6. This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent requests a hearing within the twenty-day period.

Date of Issuance 9/26/07

//original signed by//

Jose Kou, P. E., Branch Chief  
Southern California Permitting and  
Corrective Action Branch  
Hazardous Waste Management Program  
Department of Toxic Substances Control